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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 EDDIE S. FERRER and SHEILA M.
11 FERRER,

12 Plaintiffs,

13 v.

14 JP MORGAN CHASE BANK NA,

15 Defendant.

16 CASE NO. C13-0306JLR

17 ORDER DENYING MOTION TO
18 AMEND

19 I. INTRODUCTION

20 This matter comes before the court on Plaintiffs' motion to amend their complaint
21 (Mot. (Dkt. # 36).) Having considered the submissions of the parties, the balance of the
22 record, and the relevant law, the court DENIES leave to amend.

23 II. BACKGROUND

24 This is a mortgage foreclosure case. Plaintiffs contend that Defendant JP Morgan
25 Chase Bank NA ("Chase") wrongfully foreclosed on their "primary residence." (See
26

1 generally Compl. (Dkt. # 1).) Plaintiffs' original complaint alleges, among other things,
 2 causes of action for breach of contract, breach of the duty of good faith and fair dealing,
 3 violation of the Deed of Trust Act, RCW 61.42.110, quiet title, and violation of the Fair
 4 Debt Collection Practices Act, 15 U.S.C. § 1692f(6). (*See id.*)

5 This case has been pending for two years. (*See generally* Dkt.) Trial is scheduled
 6 for May, 2015. (Sched. Ord. (Dkt. # 22).) Plaintiffs now move to amend their complaint
 7 to (1) add a new defendant, Northwest Trustee Services, Inc. ("Northwest Trustee") and
 8 (2) add new claims for racial and national origin discrimination in violation of 42 U.S.C.
 9 § 1981, the Washington Law Against Discrimination, ch. 49.60 RCW *et seq.*, and the Fair
 10 Housing Act, 42 U.S.C. § 3605. Northwest Trustee was originally named as a defendant
 11 in this suit, but Plaintiffs voluntarily dismissed it without prejudice in July 2013. (*See*
 12 Not. (Dkt. # 14).) Plaintiffs' motion to amend is now before the court.

13 III. ANALYSIS

14 A. Standard for Granting Leave to Amend

15 Federal Rule of Civil Procedure 15 governs timely motions to amend. Rule 15
 16 provides that, after an initial period for amendment as of right, pleadings may be
 17 amended only with the opposing party's written consent or by leave of the court. Fed. R.
 18 Civ. P. 15(a). "The court should freely give leave [to amend pleadings] when justice so
 19 requires." Fed. R. Civ. P. 15(a)(2). But a district court need not grant leave to amend
 20 where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3)
 21 produces an undue delay in litigation; or (4) is futile. *AmerisourceBergen Corp. v.*
Dialysist W., Inc., 465 F.3d 946, 951 (9th Cir. 2006). The party opposing amendment has

1 the burden of showing that amendment is not warranted. *DCD Programs, Ltd. v.*
2 *Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

3 Federal Rule of Civil Procedure 16 governs untimely motions to amend. Once a
4 district court enters a pretrial scheduling order that establishes a timetable for amending
5 pleadings, Rule 16's standards control. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
6 604, 607-08 (9th Cir. 1992). Rule 16 provides that a court's scheduling order "may be
7 modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).
8 Therefore, a party seeking to amend a pleading after the deadline for doing so has passed
9 must show good cause. *See Johnson*, 975 F.2d at 607-08.; *see also DZ Bank AG*
10 *Deutsche Zentral-Genossenschaftbank, Frankfurt AM Main v. Choice Cash Advantage,*
11 *LLC*, 918 F. Supp. 2d 1156, 1170 (W.D. Wash. 2013) (denying motion to amend after the
12 scheduling order deadline for lack of good cause under Rule 16).

13 In determining whether there is good cause for modifying a scheduling order, the
14 court "primarily considers the diligence of the party seeking the amendment." *Johnson*,
15 975 F.2d at 609. The court may modify the scheduling order "if it cannot reasonably be
16 met despite the diligence of the party seeking the extension." *Id.* However, "[i]f that
17 party was not diligent, the inquiry should end." *Id.*; *see also In re W. States Wholesale*
18 *Natural Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013). "[C]arelessness is not
19 compatible with a finding of diligence and offers no reason for a grant of relief."

20 *Johnson*, 975 F.2d at 609.

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1 **B. Addition of a New Defendant**

2 The deadline for joining parties was October 1, 2014. (*See* Sched. Ord.)

3 Therefore, Plaintiffs' November 19, 2014, motion to amend its complaint to add
4 Northwest Trustee as a defendant is untimely, and must be judged according to the "good
5 cause" standard of Rule 16. *See Johnson*, 975 F.2d at 607-08.

6 Plaintiffs have failed to demonstrate good cause for adding Northwest Trustee.

7 They do not identify any newly discovered facts or change in the law that arose after the
8 deadline to join parties. (*See generally* Mot.) Nor do they identify any ruling by this
9 court since the deadline passed that has materially altered the fundamental issues or
10 theories of the case. *See Farnum v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984
11 (9th Cir. 2011). In fact, the only new allegation concerning Northwest Trustee in
12 Plaintiffs' proposed amended complaint is the allegation that Northwest Trustee
13 inappropriately scheduled a trustee's sale of Plaintiffs' residence for October 18, 2013.

14 (*See* Prop. Am. Compl. ¶¶ 38-39 (Dkt. # 36-3).) It is clear Plaintiffs were previously
15 aware of this attempted sale, which occurred one year before the deadline to amend,
16 because they allege that "as a result of [Northwest Trustee's] action," they "were forced
17 to retain counsel to resist the nonjudicial foreclosure." (*Id.* ¶ 39.) Plaintiffs provide no
18 reason why they could not reasonably have included Northwest Trustee in their complaint
19 before the deadline. *Johnson*, 975 F.2d at 609. Absent a showing of diligence, the
20 inquiry ends here. *See In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d
21 at 737. Because Plaintiffs have not shown good cause, the court DENIES their motion to
22 add Northwest Trustee as a defendant.

1 **C. Addition of New Claims**

2 The court's scheduling order states: "Amended Pleadings due by 11/19/2014."

3 (Sched. Ord.) Plaintiffs, however, waited until November 19, 2014, to file their motion

4 to amend their complaint. (*See Mot.*) As such, their amended pleadings were not ripe for

5 consideration until three weeks after the November 19, 2014, deadline. *See W.D. Wash.*

6 LCR 7(d). Therefore, their motion to add new claims was also untimely. Under the Rule

7 16 standard, Plaintiffs' motion to add new claims fails for the same reason that their

8 motion to add a new party fails: lack of diligence. *See supra* § III.B.

9 But even if Plaintiffs' motion to add new claims was timely, it would fail under

10 the Rule 15 standard. First, Plaintiffs' motion produces an undue delay in litigation.

11 Plaintiffs' insistence that its amendments merely "clarify" the existing claims rings false.

12 (See Mot. at 2.) Plaintiffs' original complaint contained claims primarily predicated on

13 contract theories. (*See generally* Compl.) Plaintiffs' proposed amended complaint adds

14 claims for discrimination on the basis of race and national origin. (*See generally* Prop.

15 Am. Compl.) These new and distinct legal theories implicate different factual inquiries,

16 and would therefore require additional discovery. For example, Chase would be entitled

17 to re-open Plaintiffs' depositions. The discovery cut-off, however, looms less than two

18 weeks away, with the dispositive motions deadline scheduled four weeks after that, and

19 trial just two months later. (See Sched. Ord.) In order to permit Chase to adequately

20 brief dispositive motions and prepare for trial, it would be necessary to postpone the

21 discovery deadline and the trial date.

1 In evaluating whether a delay resulting from an amendment is “undue,” the court
 2 inquires “whether the moving party knew or should have known the facts and theories
 3 raised by the amendment in the original pleading.” *AmerisourceBergen Corp.*, 465 F.3d
 4 at 953. Here, Plaintiffs identify no newly discovered facts that they could not have raised
 5 in the original pleading. (*See Mot.*) Plaintiffs’ original motion is only three pages long
 6 and does not address the factors relevant to motions to amend. (*See Mot.*) Plaintiffs also
 7 failed to file a reply. (*See generally Dkt.*) Moreover, Plaintiffs’ proposed amended
 8 complaint contains only conclusory allegations. For example, Plaintiffs allege that:
 9 “Where Chase has routinely released liens of second mortgages in other cases for other
 10 borrowers who did not solicit or bargain for such act [sic], where these borrowers are not
 11 of the same origin as the Plaintiffs, the discriminatory treatment Plaintiffs received from
 12 Chase is clearly based on of [sic] racial animus.” (Prop. Am. Compl. ¶ 84.) Plaintiffs
 13 also allege that “Chase’s refusal to re-convey the Deed of Trust recorded against the
 14 primary residence of the Asian, Filipino plaintiffs . . . constitutes discrimination.” (*Id.*
 15 ¶ 88.) These allegations shed no light on the basis for Plaintiffs’ claims.

16 In short, Plaintiffs’ have not provided any explanation—let alone a satisfactory
 17 explanation—as to why, twenty months into the litigation, they have so drastically
 18 changed their litigation theory. *See AmerisourceBergen Corp.*, 465 F.3d at 953. The
 19 court concludes that the delay necessitated by Plaintiffs’ proposed amendments is undue.

20 Second, the addition of new claims would prejudice Chase. The nearest openings
 21 in the court’s trial calendar are set for April 2016. Consequently, amendment would
 22 delay the trial by 11 months. But the trial date in this case was previously postponed for

1 10 months, in part to accommodate Plaintiffs' visit to their aging mother in the
2 Philippines. (*See* 1/27/14 Min. Order (Dkt. # 21).) The court notes that, in the meantime,
3 Plaintiffs have continued to reside on the foreclosed property. (*See* Prop. Am. Compl.
4 ¶ 11.) The court will not speculate as to Plaintiffs' motives for waiting until the last
5 minute to move to amend their complaint. Regardless, Chase is entitled to a timely
6 resolution of the claims against it. If Plaintiffs' unsupported motion to amend is granted,
7 Chase will be deprived of that right.

8 Because amending the complaint to add new claims would cause undue delay in
9 the litigation and that delay would prejudice Chase, the court DENIES Plaintiffs' motion
10 to add new claims.

11 IV. CONCLUSION

12 For the foregoing reasons, the court DENIES Plaintiffs' motion to amend (Dkt.
13 # 36).

14 Dated this 5th day of January, 2015.

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17 JAMES L. ROBART
18 United States District Judge
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